

Internal Revenue Service

Department of the Treasury

District
Director

Date: OCT 06 1994

Employer Identification Number

Case Number

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were incorporated as a [REDACTED] co Nonprofit Corporation on [REDACTED]. Your statement of purpose as included in your Articles of Incorporation is that you are organized and operated exclusively for creative problem solving and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

In support of these purposes, you plan to operate an art incubator program. The purpose of this program is to provide an educational environment where practicing artists will receive instruction in business methods and practices which will significantly increase their chances for financial success. The program allows artists to promote, market, sell and negotiate piece percentage position of their own artwork to the public at a gallery maintained by the organization. The artists will also manage and sell art for artists not participating in the incubator program to improve skills in the gallery/show process. The remaining funds are used for overhead, maintenance, and public relations.

You have a [REDACTED] program which is contracted to persons outside the Foundation. The persons or organizations will be allowed to lease the organization's facilities to provide community programs. You also intend to erect an outside sculpture museum open to the public.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be rearded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Revenue Ruling 71-395, 1971-2 C.B. 228, states that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3).

Revenue Ruling 76-152, 1976-1 C.B. 151, states that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting and selling art works of local artists while retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under Section 501(c)(3).

The art incubator program in this case is engaged in showing and selling the works of artists at all levels of education or formal training which is a vehicle for advancing their careers and promoting the sale of their work. This serves the private purposes of the artist, even though the exhibition and sale of artwork may be an educational activity in other respects.

The [REDACTED] program is actually a lease agreement to allow other persons or organizations an opportunity to use your facilities for their own community programs.

Accordingly, it is held that your organization is not organized and operated exclusively for charitable, religious or educational purposes and does not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this Section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by Section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code Section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

[REDACTED]

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018